IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 193 of 1999

in

SPECIAL CIVIL APPLICATIONNo 4516 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BP JOSHI ASSTT.ADMN. OFFICER

Versus

UNITED INDIA INSURANCE CO LTD

Appearance:

MR ANAND L SHARMA for Appellant

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.P.BUCH

Date of decision: 20/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

By this appeal under Clause 15 of the Letters Patent, the appellant Mr B P Joshi, an Administrative Officer working with the respondent-Insurance Company of the United India Insurance Company Ltd., at the relevant time, has questioned the legality and validity of the judgment recorded by the learned Single Judge on 9.11.1998 in Special Civil Application No.4516/98 whereby, the writ petition summarily came to be dismissed against the order of termination passed by the respondent authority on the ground of misconduct and misappropriation of public funds to the extent of Rs.83,474/-.

2. A resume of the material and relevant facts giving rise to the present LPA may be highlighted at this juncture so as to appreciate and examine the merits of the appeal and the impugned order, at the admission stage.

3. The appellant is the original petitioner, who came to be appointed as an Accounts Clerk by the respondent Insurance Company on 16.7.1966. He, therefore, was maintaining the register for the premium and proposals received by him and used to deposit the same from time to time. He had prepared the register and got the entries made in the same, the premium received along with the proposal and it was to be handed over to the cashier as alleged by him, at the end of the month. However, before the original petitioner could hand over the said premium and proposals to the cashier concerned, he fell seriously sick in the office itself and became unconscious and he was removed to the hospital leaving the cash and other documents there and there on the table and the cupboard.

4. The respondent Insurance Company held departmental enquiry and upon conclusion, thereof, it was found that the original petitioner was guilty of gross misconduct and misappropriation and, therefore, he was visited with penalty of removal from the service, which shall not be a disqualification for future employment as has been imposed against him. It has also been directed that a sum of Rs.83,474 shall be recovered from him. The Inquiry Officer was not appointed relying on rule 22(4) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975, (for short, 'the Rules of 1975'), which provides that it may not be necessary to hold an inquiry in respect of the charges admitted by an employee in the written statement.

5. Therefore, the petitioner's main challenge before the learned Single Judge and before this Court has been that the impugned order of termination cannot be passed without holding an enquiry against him. The order dated 29.8.1997 shows the charges so framed against the petitioner, that during 1995, while he was assigned functions of Accounts Department, he, instead of handing over the proposals and premium collected by him, had retained with him the said amount of Rs.83,474/- and had misappropriated the said amount. The officer of the Insurance Company-original petitioner and the appellant before us, admitted the factum of misappropriation of funds by giving his statement on 5.9.1995. Thereafter, a charge-sheet dated 16.5.1997 was filed with the memorandum on 28.5.1997. The original petitioner sought time to file reply by letter dated 4.6.1997 and ultimately, submitted his reply on 12.6.1997 and in his reply, he also unconditionally admitted the charge of misappropriation. Under this set of circumstances, the requirement of holding the enquiry was obviated and the disciplinary authority, in exercise of the powers conferred under Rule 23 (g) of the Rules of 1975 imposed the penalty of removal from service.

6. The petitioner challenged the order of the disciplinary authority, by filing appeal before the Appellate Authority unsuccessfully. After the dismissal of the appeal, the petitioner invoked the provisions of Article 226 of the Constitution and challenged the removal order confirmed by the appellate authority, by filing the aforesaid writ petition and as stated earlier, upon examination, appreciation and analysis of the case, the learned Single Judge, summarily dismissed the petition.

7. The learned Advocate appearing for the appellant-original petitioner has reiterated all the same grounds and contentions raised before the learned Single Judge. He has not been able to successfully persuade us that the view and the ultimate conclusion, after following the contentions reached by the learned Single Judge, are in any way, vulnerable and warranting our interference in exercise of powers under Clause 15 of the Letters Patent. No doubt, ordinarily, when the Appellate Court broadly agrees with the views and ultimate conclusion reached by the Court or authority below, it would not be necessary to articulate and repeat the same as per the settled position of law. However, we would like to highlight the following aspects:

8. The serious contention which is reiterated before us is that the admission of guilt or the confessional statement given by the appellant on two occasions - first on 5.9.1995 and again after the charge-sheet was served on 12.6.1997, are not voluntary and out of free will. In that, it has been contended that the respondent authority induced him that he (the officer) will be let off leniently, if the allegations and the charges are admitted by him. The Learned Single Judge has dealt with this aspect seriously and has concluded and has rejected this contention very rightly. The appellant-original petitioner is a responsible officer of the Insurance Company, who has been working since 1966, has desired the disciplinary authority, the Appellate Authority, the learned Single Judge and to us, in this LPA, that the confessional or admission statements made on two occasions, as stated above, was involuntary, as it was obtained under either inducement or compulsion. It is rightly disbelieved by the authorities below in departmental proceedings and also by the learned Single Judge, in the light of the facts and circumstances. Otherwise also, there is no material worth candid, which remotely even whisper to take a different view than the view taken by the learned Single Judge, by summarily dismissing the writ petition. Moreover, admission of delinquency or confession of guilt by a responsible senior officer of the Insurance Company, not on one occasion but on two occasions in writing in a statement and that too with an intervening gap of almost two years, could not be heard or cannot be permitted to condemn that on both the occasions, such statements were made without his volition or willingness. In our opinion, the learned Single Judge has rightly rejected this plea and we find no reason to accept the plea reiterated before us to uphold and confirm the said view. On the contrary, we cannot resist temptation of placing it on record that it is in all probability advanced at ingenious strategy to explain away the gross misconduct and serious misappropriation of public funds.

9. The second contention that the removal order is not recorded by the competent authority. This submission is also very well dealt with the by the learned Single Judge. This contention reiterated before us is repetition and we find no substance or material in this contention. The third contention advanced before us is that, even if the plea of involuntary statements made on two occasions is not found favour with, the order of removal cannot be recorded or passed against the appellant-original petitioner without holding enquiry under the rules. This submission is also without any

merits. Holding of enquiry by a domestic tribunal under the rules would be necessitated to find out the disputed questions and the allegations made in the charge-sheet, when refuted, and it is not necessary to hold an enquiry by the department when the confession of guilt or the admission of delinquency is made and articulated in black and white in a form of statement before the authority of the company. Despite such a confession, when the respondent Insurance Company had served the petitioner with a charge-sheet highlighting the nature and type of the charge-sheet, and in response to the said charge-sheet, almost after the spell of two years, from the date of making the first admission of the delinquency or confession of the guilt, again in a written statement, admitted the charges with respect to the question, in such fact-situation holding an enquiry is totally uncalled for as not necessary. When the charge is framed and if it is denied, it becomes absolutely necessary to ascertain the truthfulness of the charges by holding departmental enquiry. Rule 23 of the Rules governing misconduct of the appellant, and the conduct of the employees of the Insurance Company including the officers are covered by the said rules, which clearly provides that in such a situation like this, where, the charges are accepted or the delinquency is admitted or the guilt is confessed, without holding any enquiry, the order for penalty can be passed by the competent authority under the Rules. It may happen that in a given case, the authority may not accept the admission and proceed with the enquiry, as it happens in many cases in judicial trials. However, it can never be contended by a person, who has admitted or confessed, to insist on holding of departmental enquiry. Therefore, the last contention has also no substance and it deserves to be thrown on board.

10. In, sofaras, the proportionality of the punishment imposed on the appellant-original petitioner, Officer of the Insurance Company is concerned, the exercise of the discretion by the disciplinary authority and confirmed by the Appellate Authority and the challenge against the rejection by the learned Single Judge, cannot be said to be in any way vulnerable or disproportionate to the delinquency or the guilt admitted. No doubt, upon the judicial review, if the quantum of punishment awarded to the delinquent in a domestic tribunal, is shown to be disproportionate to the delinquency or the guilt established, the Court can, in the light of the facts of the given case, exercise its power under Article 226 of the Constitution of India. It is for the delinquent to show that in the facts and

circumstances of the case, exercise of discretionary power by the disciplinary authority, is unjust or unreasonable. It is again for the delinquent to show to the satisfaction of the court that the punishment imposed upon the delinquent, is therefore, excessive, harsh and disproportionate to the delinquency established. In the fact-situation of the present case, such a contention can hardly be permitted to be raised or to be allowed.

11. The menace of corruption and bribery, unfortunately, is spreading like a wild fire. The worst corruption is by the best, as it is seen. A responsible officer, an experienced person, dealing with public funds, having been found indulging in misappropriation of public fund to the extent of more than Rs.84,000/-. And again, having admitted in writing, in a form of statement on two occasions, cannot be considered to be a fit case for taking a lenient view in the matter. Irrespective of the quantum of the amount misappropriated, such a responsible, experienced officer, cannot be permitted to agitate that leniency should be shown and the extreme penalty of removal from the service should be resorted to. No doubt, while examining and appreciating the quantum of punishment or proportionality doctrine, the court is obliged to, and also the Court has to address to various facts and facets. In the present case, as said hereinabove, we have no hesitation in holding that the imposition of removal from the service on account of misappropriation of public funds by the respondent, an experienced officer of the Insurance Company, by the disciplinary authority and confirmed by the Appellate authority, and such a plea having been rejected by the learned Single Judge, we find no substance in this contention. On the contrary, we would be tempted to say that the imposition of penalty of removal, which means that the incumbent or the officer is not disqualified from future employment, is still a lenient view. We are satisfied that the imposition of penalty of removal from the service is justified in the facts and circumstances of the appeal, invoking aides of clause 15 of the Letters Patent, challenging the order of the learned Single Judge and also, the two authorities under the departmental channel, by way of domestic tribunal, has remained totally unquestionable and we are of the opinion that in such a fact-situation, we have to raise our hands and affirm and confirm the impugned judgment holding that the appeal under Clause 15 of the Letters Patent, at the instance of the appellant-original petitioner, is totally devoid of any force of facts and law and deserves the only and only fate of dismissal at the inception.

Accordingly this Appeal is summarily dismissed.

At this juncture, it is submitted that after the retirement of the petitioner and during the pendency of the appeal, a petition under Article 226 of the Constitution of India came to be filed since the appeal was not being taken up and heard on merits early.

20.11.2000 [J N Bhatt, J.]

[D P Buch, J.]

msp